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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re B.B., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

B.B.,

Defendant and Appellant.

G054858

(Super. Ct. No. 17DL0191)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Cheryl L.  
Leininger, Judge. Affirmed.

Renée Paradis, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler and Julie L. Garland, Assistant Attorneys General, Melissa Mandel and Mary Katherine Strickland, Deputy Attorneys General, for Plaintiff and Respondent.

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B.B. (Minor) appeals from a judgment declaring him to be a ward of the court, sentencing him to 27 days in juvenile hall with credit for 27 days previously served, and placing him on probation. The court found true the People's allegation that Minor committed assault with force likely to produce great bodily injury. Minor contends the court erred by sustaining the People's objections to questions his attorney asked him and another witness during trial. But Minor did not make an adequate offer of proof as to the substance, purpose and relevance of the excluded evidence and, in any event, any error in the exclusion of the evidence was harmless. Accordingly, we affirm the judgment.

## FACTS

### *The Incident*

In January 2017, Minor took his mother's car without permission. His mother found the car outside of Minor's girlfriend's house. When she arrived, Minor's girlfriend was upset and got out of the car. Minor left the car keys inside the car and chased after his girlfriend. His mother took the keys, and Minor eventually returned to the car. His mother tried to convince Minor to come home with her, but he said he would break one of the car's windows if she did not give him the keys. Minor then threw a brick and broke the back window of the car. He threatened to continue breaking the windows if his mother did not give him the keys.

Leonardo Sanchez and his brother, Jose Luis Sanchez, lived nearby and heard yelling outside of their house.<sup>1</sup> Leonardo went outside to investigate and observed Minor, his mother, and his girlfriend. After Leonardo went back inside, he heard yelling again. He went outside and saw Minor holding a brick and hitting either the car or his mother. Leonardo thought Minor was attacking his mother or stealing from her so he yelled at Minor to leave her alone. At this point, Jose came outside and also yelled at Minor to leave his mother alone. Leonardo and Jose only spoke Spanish so they did not understand what Minor and his mother were arguing about in English.

Minor's mother tried to hold Minor close to her to protect him because she was afraid Leonardo and Jose might hurt him. She heard one of the two men say they would shoot Minor in the head if they had a gun. Minor ran away from the scene, and Jose pursued him with Leonardo following behind so they could detain him until the police arrived. Minor's mother told them to leave her son alone. At one point, Minor's mother heard one of the two men say, "Come here, you little asshole." Minor also heard one of the two men say, "When I catch up with you, I am going to fuck you up."

According to Jose, Minor laughed mockingly as Jose ran after him. Leonardo testified Minor looked like he was going to pull out a gun or knife when he reached a street corner. At one point during the chase, Minor picked up a metal pipe and swung it at Jose. According to Jose, he fell on the ground, and Minor swung the pipe a second time, hit him on the foot, and ran away. Although Minor admitted swinging the metal pipe at Jose, he denied hitting Jose and testified he was afraid of Jose and Leonardo because they chased and threatened him.

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<sup>1</sup>

We refer to Leonardo Sanchez and Jose Luis Sanchez by their first names for ease of reading and to avoid confusion, and not out of disrespect.

### *Testimony and Excluded Evidence*

At trial, Minor's counsel asked Jose the following question: "Is that a '13' tattooed on your hand?" The People objected based on relevance. Minor's counsel responded, "Your honor, I believe it could go to moral turpitude as well as motivation and bias." The court sustained the objection.

During Minor's testimony, his counsel asked him if he was surprised when Leonardo and Jose came outside. Minor testified: "Yeah. Because they looked pretty big and gang affiliated." The People objected: "Calls for speculation. Lacks foundation." The court sustained the objection and struck Minor's testimony.

Minor later testified Leonardo and Jose "were like from a gang or something." Although the People objected based on a lack of foundation, the court did not rule on the objection. Minor's counsel continued to ask: "Is that something you assumed?" Minor responded: "Yeah." Minor's counsel further asked: "You don't actually know that. You just kind of thought that at the time?" Minor responded: "Yeah."

### *The Court's Ruling*

The court found true the People's allegation that Minor committed assault with force likely to produce great bodily injury but dismissed two other claims. According to the court, Minor "was not acting in lawful self-defense." The court noted Leonardo and Jose were small in stature and found their testimony to be credible. The court further explained: "I don't believe that any reasonable person at the same age and in the same situation would have believed that he was in imminent danger of bodily injury or being unlawfully touched. Further, even if somehow you could construe that as him having a right to self-defense, which I do not, at the time that the Minor actually hit [Jose, Jose] had fallen to the ground and was no longer capable of inflicting any injury on

[Minor].” The court declared Minor to be a ward of the court, sentenced him to 27 days in juvenile hall with credit for 27 days previously served, and placed him on probation.

## DISCUSSION

Minor contends the court erred by excluding evidence regarding Minor’s belief that Leonardo and Jose were gang members. He notes the court excluded Jose’s testimony about his tattoo and Minor’s testimony that Leonardo and Jose were “gang affiliated.” He claims this violated his Fourteenth Amendment right to present a defense. According to Minor, “[i]f [he] reasonably believed that Jose was affiliated with a violent street gang, that would be relevant to the question of whether his ultimate belief that his actions were necessary to defend himself was a reasonable one [in asserting self-defense].”

““To justify an act of self-defense for [an assault charge under Penal Code section 245], the defendant must have an honest *and reasonable* belief that bodily injury is about to be inflicted on him.”” (*People v. Minifie* (1996) 13 Cal.4th 1055, 1064.)

““[A]ny right of self-defense is limited to the use of such force as is reasonable under the circumstances.”” (*Id.* at p. 1065.) The reasonableness requirement “is determined from the point of view of a reasonable person in the defendant’s position.” (*Ibid.*)

Here, Minor forfeited his claim that the evidence was relevant to his self-defense theory because his counsel did not raise this argument in his offer of proof in the court below. Instead, Minor’s counsel only argued Jose’s testimony was relevant to “moral turpitude as well as motivation and bias.” He also never explained the relevancy of Minor’s testimony that Leonardo and Jose looked “gang affiliated.” Having failed to assert the evidence was relevant to his self-defense theory, Minor cannot offer this new justification for admitting evidence on appeal. (Evid. Code, § 354, subd. (a).)

“In general, a judgment may not be reversed for the erroneous exclusion of evidence unless ‘the substance, purpose, and relevance of the excluded evidence was made known to the court by the questions asked, an offer of proof, or by any other means.’” (*People v. Anderson* (2001) 25 Cal.4th 543, 580, quoting Evid. Code, § 354, subd. (a).) “This rule is necessary because, among other things, the reviewing court must know the substance of the excluded evidence in order to assess prejudice.” (*Anderson*, at p. 580.) Here, after the court sustained the People’s objections, Minor’s counsel did not explain the substance of Jose’s proposed testimony regarding his tattoo. While Minor’s counsel stated the testimony was relevant to “moral turpitude as well as motivation and bias,” he never made an offer of proof as to what the evidence would be or what foundation he could lay. Minor’s counsel also did not make an offer of proof as to what foundation he could lay for Minor’s testimony that Leonardo and Jose looked “gang affiliated.” In fact, Minor did not present any evidence that he even saw Jose’s tattoo during the incident.

Even if there was no forfeiture, we conclude there was no reversible error. “As a general matter, the ‘[a]pplication of the ordinary rules of evidence . . . does not impermissibly infringe on a defendant’s right to present a defense.’” (*People v. Fudge* (1994) 7 Cal.4th 1075, 1102-1103.) “Although completely excluding evidence of an accused’s defense theoretically could rise to this level, excluding defense evidence on a minor or subsidiary point does not impair an accused’s due process right to present a defense.” (*Id.* at p. 1103.) “If the trial court misstepped, ‘[t]he trial court’s ruling was an error of law merely; there was no refusal to allow [defendant] to present a defense, but only a rejection of some evidence concerning the defense.’ [Citation.] Accordingly, the proper standard of review is that announced in *People v. Watson* (1956) 46 Cal.2d 818 . . . .” (*Ibid.*)

Here, the court did not prevent Minor from testifying that he thought Leonardo and Jose were gang members. Minor testified they “were like from a gang or

something.” Although the People objected, the court did not rule on the objection. In fact, the court allowed Minor’s counsel to ask follow-up questions, and Minor confirmed he had “assumed” Leonardo and Jose were gang members. The excluded evidence regarding Jose’s tattoo or Minor’s statement that they were “gang affiliated” was therefore cumulative. There was no reasonable probability the exclusion of this evidence affected the outcome and therefore any error was harmless. (*People v. Williams* (2009) 170 Cal.App.4th 587, 613 [“We conclude that the error in admitting cumulative gang evidence was harmless under *Watson*”]; *McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1054 [error in admission of evidence ““is not prejudicial if the evidence “was merely cumulative or corroborative of other evidence properly in the record”””].)

#### DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

FYBEL, ACTING P. J.

THOMPSON, J.